

## HOUSE BILL NO. 392

INTRODUCED BY R. HAMILTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT AN AMENDMENT OF AN ORIGINAL PETITION FOR POSTCONVICTION RELIEF MUST BE FILED WITHIN THE SAME TIME PERIOD THAT IS ALLOWED FOR THE FILING OF AN ORIGINAL PETITION; AND AMENDING SECTION 46-21-105, MCA."

WHEREAS, the Legislature wishes to clarify that an amendment of an original petition for postconviction relief must be filed within the same time period that is allowed for filing the original petition; and

WHEREAS, the Legislature intends to promote judicial efficiency by limiting postconviction appeals to one time period while continuing to preserve a defendant's right to postconviction relief for matters involving new evidence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-21-105, MCA, is amended to read:

**"46-21-105. Amendment of petition -- waiver of grounds for relief.** (1) (a) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended original petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of an amended original petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing. All grounds for relief, whether raised in the original or an amended original petition, must be raised within the time period allowed for the filing of a petition under 46-21-102.

(b) The court shall dismiss a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises grounds for relief that could not reasonably have been raised in the original or an amended original petition.

(2) When a petitioner has been afforded the opportunity for a direct appeal of the petitioner's conviction, grounds for relief that were or could reasonably have been raised on direct appeal may not be raised, considered, or decided in a proceeding brought under this chapter. Ineffectiveness or incompetence of counsel in proceedings on an original or an amended original petition under this part may not be raised in a second or

1 subsequent petition under this part.

2 (3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were or  
3 could have been raised in support of the petitioner's claim for relief."

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5 NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are  
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
7 the part remains in effect in all valid applications that are severable from the invalid applications.

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9 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,  
10 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

11 - END -